IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2006

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THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE J.A.K.SAMPATHKUMAR

H.C.P.NO.841 OF 2006

Vijayakumar @ Kallakurichi Vijayakumar .. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. By its Secretary to Government,
Prohibition and Excise Department,
Fort St. George,
Chennai-9.
2.The Commissioner of Police,
Salem City, Salem .. Respondents

This habeas corpus petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of habeas corpus, calling for the entire records culminating in the passing of the order of detention against the petitioner under Act 14/82, vide detention order C.M.P.No.7/Goonda/Salem City/2006, dated 11.7.2006 on the file of the second respondent, quash the same as illegal and consequently direct the respondents to produce the body and person of the petitioner from Central Prison, Salem before this Court and set him at liberty.

For Petitioner : Mr.K.Selvakumaraswamy
For Respondents : Mr.M.Babu Muthumeeran, APP

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ORDER

(The order of the Court was made by P.K.MISRA, J.)

Heard the learned counsel appearing for the parties. The order of preventive detention of the detenu under Act 14 of 1982 is being challenged in the present Habeas Corpus Petition.

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2.The order of detention was passed on the ground that the detenu is a Goonda. In the grounds of detention, a reference has been made to Salem Town Police Station Crime No.1049 of 2006, which has been registered on the allegation that the detenu has committed an offence under Sections 364 (A), 386, 307 and 120(B) IPC. In the grounds of detention, a reference has also been made to the ground case, dated 28.06.2006, wherein it is alleged that the detenu had committed an offence under Section 392 IPC, which has been registered by Kitchipalayam Police Station in Crime No.1310 of 2006. In paragraph 5 of the grounds of detention, the Detaining Authority has made a reference to the fact that the detenu has been remanded to judicial custody in connection with the ground case, namely Crime No.1310 of 2006. However, it is not in dispute that the detenu was also in custody in connection with the earlier case, namely Crime No.1049 of 2006, where-under the case has been registered under Section 364(A) IPC, which is punishable with life imprisonment, Section 386 IPC, where the punishment can extend upto 10 years and Section 307 IPC, which is punishable with 10 years imprisonment. Thus, it is apparent that the allegation in adverse case is equally serious or more serious when compared to the ground case.

3.In the above background, the counsel for the petitioner has contended that the Detaining Authority has not applied his mind to all relevant facts and circumstance before coming to a conclusion that there was imminent possibility of the detenu being released on bail. In support of his contention, the learned counsel for the petitioner has placed reliance on the decision reported in 2004 MLJ(Crl) 829 (ANJALAMMAL VS. THE STATE OF TAMIL NADU, REP. BY ITS SECRETARY, PROHIBITION AND EXCISE DEPARTMENT, CHENNAI AND OTHERS).

4.The learned counsel appearing for the State also placed reliance on the decision reported in 2006 (2) MLJ (CRL) 592 (SIVAKUMAR VS. STATE OF TAMIL NADU REP. BY ITS SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT AND ANOTHER). In the said judgment, the decision reported in 2006 (3) CTC 650 (REVATHY VS. STATE OF TAMILNADU) has been referred to, wherein it is observed that if the Detaining Authority is aware of the fact that the person is in remand in both the cases, where the alleged offence in the adverse case is less serious than the offence in the ground case, it cannot be said that there is any non application of mind. We do not think that there is really a conflict between two decisions, inasmuch as in the latter case, the alleged offence in the adverse case is less serious and therefore, there was no question of non application of mind, as observed by the Division Bench. On the other hand, it is very much evident from the discussion that where the offence alleged in the adverse case is equally serious or more serious, the fact that the person is in remand in connection with equally or more grave offence is not brought to the notice of the Detaining Authority, is a factor, which vitiates the subjective satisfaction.

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5.In the present case, as we have already referred to, all the offences allegedly committed in the adverse case are equally serious or more serious in nature and yet, there is no reference made to the fact that the detenu has been in remand in those cases. In such view of the matter, the subjective satisfaction of the detaining authority is vitiated. Accordingly, the order of detention is quashed. The detenu shall be released forthwith, unless he is required in connection with any other case. The Habeas Corpus Petition is allowed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Secretary to Government,
The State of Tamil Nadu,
Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
Salem City, Salem

3. The Superintendent,
Central Prison, Salem.

4. The Public Prosecutor,
High Court, Madras.

5. The Joint Secretary to Government of Tamil Nadu,
Public (Law and Order) Department,
Fort St.George, Chennai -9.

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